

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

MINUTES OF A MEETING HELD JANUARY 22, 2019

Agenda

2019 ZBA OFFICER APPOINTMENTS – CHAIR AND VICE CHAIR

**ZONING ORDINANCE INTERPRETATION: PLANNED UNIT DEVELOPMENT
SPECIAL EXCEPTION USE**

BUILD SENIOR LIVING AND BYCE & ASSOCIATES, ON BEHALF OF HAMPTON MANOR, REQUESTED A ZONING ORDINANCE INTERPRETATION OF SECTION 60.400: PLANNED UNIT DEVELOPMENT SPECIAL EXCEPTION USE ORDINANCE, SPECIFICALLY SECTION 60.412: ALLOWABLE LAND USES, TO DETERMINE IF ASSISTED LIVING FACILITIES WOULD BE A PERMITTED COMMERCIAL USE.

A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held Tuesday, January 22, 2019 at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

All MEMBERS WERE PRESENT: James Sterenberg, Chair
 Fred Antosz
 Nancy Culp
 Fred Gould
 Micki Maxwell
 Neil Sikora, Vice Chair
 Anita Smith

Also present were Julie Johnston, Planning Director, James Porter, Township Attorney, and Martha Coash, Meeting Transcriptionist. Five other persons were in attendance.

Call to Order and Pledge of Allegiance

Chairperson Sterenberg called the meeting to order and invited those present to join in reciting the “Pledge of Allegiance.”

He welcomed three new members, Fred Antosz, Fred Gould and Micki Maxwell, Planning Commission Liaison, and all members introduced themselves.

Public Comment on Non-Agenda Items

There were no comments on non-agenda items.

2019 ZBA OFFICER APPOINTMENTS – CHAIR AND VICE CHAIR

Chairperson Sterenberg asked for nominations for the position of Chair for 2019.

Mr. Sikora nominated Mr. Sterenberg to continue as Chair for 2019. It was determined he was willing to accept the nomination. There were no further nominations.

Mr. Sikora made a motion to elect Mr. Sterenberg as Chair for 2019. Mr. Antosz supported the motion. The motion was approved unanimously.

Chairperson Sterenberg asked for nominations for the position of Vice Chair for 2019.

Ms. Culp nominated Mr. Sikora to continue as Vice Chair for 2019. It was determined he was willing to accept the nomination. There were no further nominations.

Ms. Culp made a motion to elect Mr. Sikora as Vice Chair for 2019. Mr. Sterenberg supported the motion. The motion was approved unanimously.

APPROVAL OF THE MINUTES OF NOVEMBER 27, 2018

Chairperson Sterenberg asked if there were any additions, deletions or corrections to the minutes of November 22, 2018.

Hearing none, the Chair asked for a motion.

Mr. Sikora made a motion to approve the Minutes of November 27, 2018 as presented. Ms. Maxwell supported the motion. The motion was approved unanimously.

Chairperson Sterenberg moved to the next agenda item.

ZONING ORDINANCE INTERPRETATION: PLANNED UNIT DEVELOPMENT SPECIAL EXCEPTION USE BUILD SENIOR LIVING AND BYCE & ASSOCIATES, ON BEHALF OF HAMPTON MANOR, REQUESTED A ZONING ORDINANCE INTERPRETATION OF SECTION 60.400: PLANNED UNIT DEVELOPMENT SPECIAL EXCEPTION USE ORDINANCE, SPECIFICALLY SECTION 60.412: ALLOWABLE LAND USES, TO DETERMINE IF ASSISTED LIVING FACILITIES WOULD BE A PERMITTED COMMERCIAL USE.

The Chair asked Ms. Johnston to review the request for zoning ordinance interpretation related to assisted living facilities in PUDs.

Ms. Johnston said Building Senior Living and Byce & Associates, on behalf of Hampton Manor, would like to develop an assisted living facility within the Sky King Meadows Planned Unit Development (PUD). The property is located at the northeast corner of North 9th Street and Lexy Lane, approximately one-half mile south of the 9th

Street/West Main Street intersection. The specific parcel in question was planned as part of the commercial component of the PUD. She noted this is the first zoning ordinance interpretation request since she has been employed by the Township.

She said reviewing the Planned Unit Development Special Exception Use Ordinance, Section 60.412 indicates the following:

Planned unit developments are restricted to one or more of the following uses regardless of the zoning classification in which the development is located, provided such land uses are consistent with the goals and objectives of the Township Master Plan including the Sub-Area Plans:

- A. *One-family, two-family, three- or four-family, and multiple-family dwellings, including uses and buildings accessory thereto.*
- B. *Low intensity nonresidential uses such as educational, cultural, recreational, neighborhood office or neighborhood commercial nature, including uses and buildings accessory thereto. Non-residential uses shall be compatible in design, layout, scale and appearance with the residential character of the area, and shall be an integral part of a residential development logically oriented to and coordinated with the planned unit development to serve the day-to-day needs of residents in the development.*

Ms. Johnston explained after staff review of this language, the applicant was informed the proposed use did not meet the specific requirements of Section 60.412.B, which details the types of commercial uses permitted within the PUD. While similar to the envisioned uses, staff did not feel an assisted living facility could be defined as educational, cultural, recreational, neighborhood office, or neighborhood commercial.

The applicant is still very interested in the available parcel, so staff outlined some possible steps to achieve their goal of an assisted living facility at this location. One option was to request a zoning ordinance interpretation to evaluate staff's assertion that assisted living facilities are not a permitted use within the PUD. Per the documents provided by the applicant, they believe their use meets the ordinance requirements and is neighborhood commercial in nature.

She said after careful review of the zoning districts within the Township, assisted living facilities can be clearly found in the R-4: Residence District and the C: Local Business District. The R-4 District under Section 24.203 permits nursing, handicapped, convalescent, and senior citizen homes by right. The C: Local Business District under Section 30.405 allows nursing, convalescent, handicapped and senior citizen homes as a special exception use. An argument could also be made for these types of facilities within the VC: Village Commercial District. Section 33.310 allows a mix of residential and nonresidential uses within the same building as a special exception use and Section 33.255 allows professional services within the District.

She explained the PUD ordinance indicates that low intensity nonresidential uses should be permitted within the commercial component of a PUD. It specifies that such

uses should include educational, cultural, recreational, neighborhood office, or neighborhood commercial that meet the day-to-day needs of the residents in the development. Unfortunately, neither the PUD ordinance nor the Definition section of the Zoning Ordinance define what constitutes “neighborhood” commercial or office uses. The Planner’s Dictionary, a publication from the American Planning Association, defines neighborhood retail establishments as “*establishments primarily engaged in the provision of frequently or recurrently needed goods for household consumption...*” The requested use of an assisted living facility would not fit this definition or the PUD ordinance requirement of meeting the day-to-day needs of the residents.

In addition, she said, the Zoning Ordinance does not distinguish between neighborhood, local, and general commercial uses. Without clear direction within the Zoning Ordinance for these often-utilized zoning categories, it becomes difficult to differentiate which commercial uses may be considered “neighborhood commercial.” However, as the Township has identified senior living centers as a commercial use in the C: Local Business District, allowing them within the commercial component of a PUD does not seem incongruous.

The PUD ordinance also indicates uses should be consistent with the goals and objectives of the Township Master Plan, which does provide a distinction between neighborhood, local, and general commercial districts. The neighborhood commercial district was specifically established to provide day-to-day convenience needs for residents who live in the rural areas of the Township. Therefore, staff does not feel it correlates to the intent of the PUD ordinance. However, the local commercial district within the Master Plan could be examined as a comparison. It states the following:

The purpose of the Local Commercial designation is to provide low volume commercial businesses that mix well with a variety of land uses including residential, industrial, and general commercial. These uses are not high-volume / high-traffic uses with a significant number of cars coming and going, drive-through service, and/or automobile service. (These elements or characteristics can detract from the residential character or pedestrian orientation of the surrounding area and are therefore not present in the Local Commercial designation). Examples of uses that could be found in a Local Commercial designation include professional offices, unique shops such as antique shops and specialty food shops, and generally low volume enterprises that do not operate 24 hours a day.

Certainly, she said, an assisted living facility would be a low volume commercial business. According to the Institute of Transportation Engineers Common Trip Generation Rates table, an assisted living facility generates 0.22 trips per unit at peak hours. For a 60-unit building, this would equate to approximately 13 vehicle trips. A specialty food or retail store could generate anywhere from 30 trips to 64 trips during peak hours.

The difficulty with the component of the PUD ordinance related to nonresidential uses is the somewhat inconsistent language between “low intensity nonresidential uses” and meeting the “day-to-day needs” of the development residents. From a commercial

perspective, the uses that would meet the day-to-day needs of area residents are often the uses that generate the most traffic and typically have ancillary functions like truck deliveries, extended hours, etc., which may have compatibility issues with the neighboring residential development. The Master Plan Local Commercial District considers this by indicating uses should not be high-volume/high-traffic. The language of “day-to-day needs” limits nonresidential uses likely to be considered permissible.

She said it is important to note that the PUD ordinance changed in 2014 to include “*to serve the day-to-day needs of residents in the development.*” Prior to that change, uses like the Hannapel kitchen and bath design studio, which is located within the Sky King Meadows PUD at 370 North 9th Street, were permitted uses. Staff does not believe Hannapel would be allowed under the current PUD ordinance language. A kitchen and bath design studio is a professional service a homeowner may access infrequently during the course of their homeownership.

While possibly not serving the day-to-day needs of the neighboring residents, an argument could be made that both Hannapel and the proposed assisted living facility do serve area residents. If homeowners within the Sky King Meadow PUD have home improvement needs, the design studio is within walking distance, meeting a need of the resident. If a homeowner of Sky King Meadows either has a family member in need of assisted living services, or they themselves now need this service, they can visit family or move to this proposed facility without requiring them to leave their neighborhood.

Ms. Johnston outlined a summary of the interpretation arguments which could influence the Board’s deliberations:

- A senior living facility does not meet the commercial day-to-day needs of the PUD residents, as required by Section 60.412.B.
- Senior living facilities have been deemed a commercial use within the C: Local Business District and therefore are similar to other possible uses allowed within the commercial component of the PUD Ordinance (Section 60.412.B).
- While not meeting the day-to-day needs of the residents of the PUD, a senior living facility does meet a need in both the local neighborhood and general Oshtemo community.
- The PUD Ordinance indicates any use must meet the intent of the Township’s Master Plan. A senior living facility does meet the intent of the Local Commercial District outlined in the Future Land Use Plan.
- A senior living facility is a low intensity nonresidential use generating limited traffic during peak hours.

Based on the considerations outlined above, she suggested the Zoning Board of Appeals may wish to deliberate the following possible actions:

1. Conclude that since assisted living facilities are a low intensity commercial use within the C: Local Business District, they therefore are an acceptable low intensity nonresidential use with the PUD Ordinance.
2. Determine that an assisted living facility is consistent with the goals and objectives of the Local Commercial District of the Township Master Plan, and therefore is an allowed use within the PUD Ordinance.
3. Conclude that an assisted living facility is not an acceptable use because it does not meet the day-to-day needs of the residents of the PUD.

Regardless of the final interpretation made by the ZBA, she felt it would be appropriate to forward a recommendation to the Planning Commission to review Section 60.412. The language utilized in the ordinance – “day-to-day needs” – severely limits the types of nonresidential uses which may be considered compatible within a residential PUD. In addition, it is incongruent with the desire to have low intensity commercial uses within the PUD. The existing Hannapel business is a good example of this type of use.

Chairperson Sterenberg thanked Ms. Johnston for her review and asked if there were questions from board members.

Mr. Antosz asked if the inclusion of a salon, kitchen and other amenities that will be open to the public as well as residents fit in with commercial requirements.

Ms. Johnston said she did not consider that as part of her review and could consider it but that the request is an interpretation of the ordinance, not of this particular use. Focus should be on whether the request fits into the ordinance as written.

Ms. Maxwell asked for an explanation of the difference between the first and second possible actions listed by Ms. Johnston.

Ms. Johnston said both options would allow assisted living facilities as a permitted commercial use in the PUD. Option one justification is that because assisted living is allowed in C: Local Business, they should be allowed in the PUD. The second option maintains that regardless of the district, the request fits with the Master Plan.

Mr. Sikora asked what defines “day to day needs.”

Ms. Johnston felt it was reasonable to think of it as access once a week, consistent and frequent.

The Chair asked whether public notice was required in this case. Ms. Johnston said it was not.

Ms. Johnston said the Sky King PUD has both residential homes and the Hannapel design center. Today, staff would not agree that Hannapel would meet requirements; it was built prior to the ordinance change including “day to day needs.” She felt the Planning Commission needs to look at the ordinance to reconcile how low volume traffic and “day to day needs” work together.

The Chair asked how binding the zoning board’s interpretation would be.

Attorney Porter said it sets precedent but could be challenged; he hoped clearer ordinance language will be developed to clarify the ordinance before the issue comes up again.

Ms. Johnston said terminology is not defined and the Planning Commission needs to look at it. Although Hannapel is a perfect low-volume business with little impact on residents, other businesses that would be much more impactful are also permitted under the current ordinance.

Ms. Smith asked for clarification of how an apartment complex is different from an assisted living building under the ordinance.

Ms. Johnston said in Oshtemo Township assisted living facilities are considered a commercial use.

Mr. Sikora added that although an apartment complex might be money making, it is defined by Oshtemo ordinance as family residential. Assisted living is allowed in Oshtemo ordinance as commercial.

Hearing no further questions, Chairperson Sterenberg asked if the applicant wished to address the Board.

Mr. Sam Martin, 5275 Conestoga Drive, Flushing MI, of Build Senior Living, and one of the owners of the business, thanked the Board for their consideration. He described the attractive complex that would be developed and showed examples of their other assisted living developments, saying the view for neighbors would be pleasant and the impact on them low. He described the need and quality of services which would include residential, independent assistance, and end of life care all in the same apartment. He indicated the facility would provide up to 50 jobs.

Attorney Porter complimented Mr. Martin on his presentation but reminded Board Members their purpose is to determine whether assisted living facilities would be a permitted commercial use in the PUD under Ordinance language.

Mr. Antosz confirmed if the ZBA determines the request meets ordinance language that the developers would request a special exception use and site plan approval, and that neighbors would be notified at that time.

There were no comments from the public; the meeting moved to Board Discussion.

Attorney Porter explained a motion needed to be based on the facts and reminded them of the three options for consideration as described by Ms. Johnston.

In response to a question from Mr. Sikora, Ms. Johnston said the underlying zoning was R-2.

Ms. Maxwell said this is a commercial use and fits the criteria for which we are looking.

Mr. Sikora said he would like to see it work there, and maybe the ordinance missed addressing this situation at the time, but it is not in the Ordinance and he was not comfortable with trying to interpret something that was set previously. He referred specifically to the language “day to day needs.”

Ms. Smith said people in the neighborhood could use it, either by moving there or by visiting. It fits under potential “day to day use.”

Chairperson Sterenberg said he was leaning to option #1. It fits under the commercial district and the Master Plan umbrella, although maybe there was a glitch when the PUD was created. If it is interpreted to meet option #1 and it goes to the Planning Commission and they tweak the Ordinance, then the Zoning Board of Appeals action becomes mute at that point.

Attorney Porter said interpretation authority rests with the Zoning Board of Appeals. He expected action taken by the Board would force future Planning Commission action, likely to amend the Ordinance.

Ms. Johnston said the Planning Commission could rewrite the ordinance to specifically outline uses. She noted when the ordinance was changed in 2014, the Planning Commission probably thought they should allow commercial operations that support the residential development and that’s how “day to day use” ended up being included.

The Chairperson explained that was why he was leaning toward the first option with a recommendation to the Planning Commission.

Mr. Sikora indicated he was hesitant to use Hannapel’s as justification.

Ms. Johnston said she reviewed minutes from when the ordinance was being discussed in 2014; the Planning Commission felt Hannapel’s was a great use.

Chairperson Sterenberg asked if anyone wished to make a motion.

Ms. Maxwell made a motion to conclude that since assisted living facilities are a low intensity commercial use within the C: Local Business District, they therefore are an acceptable low intensity nonresidential use within the PUD Ordinance. In addition, a recommendation should be forwarded to the Planning Commission requesting review of Section 60.412 of the Zoning Ordinance. Chairperson Sterenberg supported the motion. The motion was approved 4 – 1, with Mr. Sikora voting against.

Any Other Business

Ms. Johnston told the Board the Michigan Association of Planning will be offering seminars/training for Planning Commissioners and ZBA Members in March and suggested those interested should contact her for sign up.

She also indicated there will be a meeting in February to consider a variance request regarding setbacks and landscaping.

ZBA Member Comments

Mr. Sikora recalled a setback variance request to add a ramp and wheelchair access to a front door, but did not know if the Planning Commission took action.

Ms. Johnston said she would look into it.

Adjournment

Chairperson Sterenberg noted the Zoning Board of Appeals had exhausted its Agenda. There being no other business, he adjourned the meeting at approximately 4:00 p.m.

Minutes prepared:
January 23, 2019

Minutes approved:
February 26, 2019